IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Application Number | : | 09/505,721 | Confirmation No.: | 7099 |
| Applicants | : | Joseph A. GIORDANO, et al. | | |
| Filed | : | February 17, 2000 | | |
| Title | : | SYSTEM AND METHOD FOR PROCESSING FINANCIAL TRANSACTIONS | | |
| TC/Art Unit | : | 3692 | | |
| Examiner: | : | Clement B. GRAHAM | | |
| Docket No. | : | 24124.000132 | | |

**APPEAL BRIEF**

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## APPEAL BRIEF

In response to the Office Action dated April 8, 2008 ("Office Action), rejecting pending claims 28, 31-47, 51-58, 63-65, 83, 84, and 91-106, Appellants respectfully request that the Board of Patent Appeals and Interferences reconsider and reverse the rejections of record.

### I. Real Party in Interest

The real party in interest is ExxonMobil Research and Engineering Company as assignee of the entire interest in the above-referenced application, assigned by its inventors by virtue of at least their respective employment agreements with ExxonMobil Research and Engineering Company.

### II. Related Appeals and Interferences

There are no known related appeals.

### III. Status of Claims

The Office Action rejects claims 28, 31-47, 51-58, 63-65, 83, 84 and 91-106 under 35 U.S.C. § 103(a) as allegedly being obvious over the combination of U.S. Patent No. 6,089,284 to Kaehler *et al.* ("Kaehler") and U.S. Patent No. 6,390,151 to Christman *et al.* ("Christman").

The rejection of claims 28, 31-47, 51-58, 63-65, 83, 84 and 91-106 is appealed.

## IV. Status of Amendments

No amendments to the claims have been filed after the last rejection.

## V. Summary of Claimed Subject Matter

A concise explanation of independent claims 28, 51, 99, 101 and 103 is reproduced below, along with a citation to page number, line number, figures, and reference characters, where appropriate, to assist the Board of Patent Appeals and Interferences ("Board") in appreciating the significant advances made by the embodiments of the present invention.

### A. Concise Explanation of Independent Claim 28

Claim 28 recites a system comprising: (*see, e.g.,* FIGs. 1-3, page 5, line 21 to page 6, line 23)

a merchant transceiver, comprised of a transceiver antenna, that (a) sends a first radio frequency signal to a customer transceiver and (b) receives a second radio frequency signal conveying a customer/transmitter identifier from said customer transceiver; (*see, e.g.,* FIGs. 10-12, page 8, line 12 to page 9, line 9 and page 25, line 3 to page 30, line 8)

a point-of-sale device processor, in communication with said merchant transceiver, that (a) captures transaction data and (b) transmits an authorization request to a transaction processing system; and (*see, e.g.,* page 6, lines 17-22 and page 21, line 16 to page 22, line 17)

a transaction processing system comprising a memory having program instructions, and a processor configured to use said program instructions to (a) receive said authorization request, (b) determine, from said customer/transmitter identifier and a merchant identifier, a payment processor, (c) transmit an authorization request to said payment processor for authorization and (d) transmit to said point-of-sale device said payment processor's response to said authorization request, (*see, e.g.,* page 6, lines 17-22 and page 36, lines 1-3)

wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand. (*see, e.g.,* page 12, lines 15-17).

**B. Concise Explanation of Independent Claim 51**

Claim 51 recites a method comprising:

transmitting a first radio frequency signal to a customer transceiver; (*see, e.g.,* FIGs. 10-12, page 8, line 12 to page 9, line 9 and page 25, line 3 to page 30, line 8)

receiving a second radio frequency signal including customer identification data at a receiver; (*see, e.g.,* FIGs. 10-12, page 8, line 12 to page 9, line 9 and page 25, line 3 to page 30, line 8)

creating an authorization request based in part upon the receipt of the customer identification data, the authorization request comprising transaction data and the received customer identification data; (*see, e.g.,* FIG. 14(b) and page 7, line 13 to page 8, line 6)

communicating the authorization request to a transaction processor; (*see, e.g.,* FIG. 14(b) and page 7, line 13 to page 8, line 6)

selecting a payment processor at the transaction processor based at least in part upon information associated with the customer identification data and a merchant identifier stored in a database accessible by the transaction processor; and (*see, e.g.,* page 6, lines 17-22 and page 36, lines 1-3)

communicating with the selected payment processor for approval and payment, wherein a merchant is associated with a given brand, wherein the merchant identifier is the same for all stores associated with the given brand, and wherein each customer account comprises one or more preassigned payment methods, and the one or more preassigned payment methods are associated with a respective one or more merchants, and the one or more preassigned payment

methods vary for transactions with different merchants in multiple customer accounts. (*see, e.g.,* FIGs. 6-7 and page 12, lines 3-21)

**C. Concise Explanation of Independent Claim 99**

A method for processing transactions comprising the steps of:

receiving a signal at a point-of-sale device, said signal comprising customer identification data; (*see, e.g.,* FIGs. 3, 7, 9 and 11a, page 39, line 17 to page 40, line 10)

transmitting an authorization request from said point-of-sale device to a transaction processing system, said authorization request comprising a merchant identifier, transaction data, and said customer identification data; and (*see, e.g.,* page 6, lines 17-22 and page 36, lines 1-3)

receiving a response to said authorization request from said transaction processing system. (*see, e.g.,* FIGs. 10-12, page 8, line 12 to page 9, line 9 and page 25, line 3 to page 30, line 8)

**D. Concise Explanation of Independent Claim 101**

A method for collecting consumer purchasing trend information in a transaction system, said method comprising the computer-implemented steps of:

receiving a signal at one of a plurality of point-of-sale devices, said signal comprising customer identification data; (*see, e.g.,* FIGs. 3, 7, 9 and 11a, page 39, line 17 to page 40, line 10)

transmitting an authorization request from one of said plurality of point-of-sale devices to said transaction processing system, said authorization request comprising a merchant identifier, transaction data, and said customer identification data; and (*see, e.g.,* page 6, lines 17-22 and page 36, lines 1-3)

updating a database with said transaction data and said customer identification data. (*see, e.g.,* page 44, lines 4-10)

**E. Concise Explanation of Independent Claim 103**

A method of monitoring customer progress in a merchant award program, comprising the steps of:

receiving a signal at one of a plurality of point-of-sale devices, said signal comprising customer identification data; (*see, e.g.,* FIGs. 3, 7, 9 and 11a, page 39, line 17 to page 40, line 10)

transmitting an authorization request from one of said plurality of point-of-sale devices to a transaction processing system, said authorization request comprising a merchant identifier, said transaction data, and said customer identification data; and (*see, e.g.,* page 6, lines 17-22 and page 36, lines 1-3)

crediting a customer account in a database with loyalty points indicative of said transaction data. (*see, e.g.,* page 44, lines 4-10)

**VI. Grounds of Rejection To Be Reviewed On Appeal**

The following grounds of rejection are to be reviewed on appeal:

- The rejection of claims 28, 31-47, 51-58, 63-65, 83, 84 and 91-106 under 35 U.S.C. § 103(a) as allegedly being obvious over Kaehler in view of Christman.

**VII. Argument**

Appellants respectfully submit that the rejections against the pending claims in the instant application should be reversed for at least the reasons set forth below.

**A. Independent Claim 28 is Patentable Over Kaehler and Christman Under 35 U.S.C. § 103(a)**

On pages 2-4, the Office Action rejects independent claim 28 under 35 U.S.C. § 103(a) as

allegedly being obvious in view of the combination of Kaehler and Christman. Appellants respectfully traverse this rejection.

As stated, claim 28 recites:

> A system comprising:
> a merchant transceiver, comprised of a transceiver antenna, that (a) sends a first radio frequency signal to a customer transceiver and (b) receives a second radio frequency signal conveying a customer/transmitter identifier from said customer transceiver;
> a point-of-sale device processor, in communication with said merchant transceiver, that (a) captures transaction data and (b) transmits an authorization request to a transaction processing system; and
> a transaction processing system comprising memory having program instructions, and a processor configured to use said program instructions to (a) receive said authorization request, (b) determine, from said customer/transmitter identifier and a merchant identifier, a payment processor, (c) transmit an authorization request to said payment processor for authorization and (d) transmit to said point-of-sale device said payment processor's response to said authorization request, wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand.

(Underline emphasis added.)

In making the rejection, the Office Action acknowledges that Kaehler does not disclose "wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand." However, the Office Action asserts that it would have been obvious "to modify the teachings of Kaehler to include wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand taught by Christman in order to limit customer transactions." *See* Office Action, pages 3 and 4. Appellants respectfully disagree. As set forth below, Kaehler and Christman, whether taken alone or in combination, fail to disclose, teach or suggest a system to "determine, from said customer/transmitter identifier and a merchant identifier, a payment

processor" much less a system "wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand," as presently claimed.

**1. Kaehler does not teach or suggest a processor configured to "determine, from said customer/transmitter identifier and a merchant identifier, a payment processor"**

The transaction processing system of claim 28 comprises a processor configured to use program instructions to "determine, from said customer/transmitter identifier and a merchant identifier, a payment processor." As set forth below, Kaehler does not disclose, teach or suggest the recited transaction processing system.

The Office Action asserts that a processor configured to "determine, from said customer/transmitter identifier and a merchant identifier, a payment processor" is disclosed by Kaehler, at column 13, lines 36-49 and column 11, lines 1-14 and column 8, line 58 to column 9, line 8. *See* Office Action, page 3. However, these citations do not even address, much less teach or make obvious, this claim requirement.

First, addressing each citation in turn, Kaehler, at column 13, lines 36-49, discloses:

> Alternatively, once a customer places an order and the dispenser receives the order, and the order is associated with the transponder, the dispenser may transmit other indicia, such as a code for the order itself, to the transponder for storage. Next, the dispenser will effect payment for the transaction as discussed above. In the more basic embodiment discussed above, the QSR interrogators associated with the QSR window or in-store terminal will monitor for the presence of a transponder, receive the transponder order indicia, and associate the order with the indicia received from the transponder. The operator is then informed of the order for that particular customer block.

There is no disclosure in this passage of a transaction processing system to "determine, from said customer/transmitter identifier and a merchant identifier, a payment processor." A host network

or central control system that simply associates account information with a transponder identifier to effect payment is not such a transaction processing system. In fact, this relied-upon portion of Kaehler does not even mention a merchant identifier.

Second, Kaehler, at column 11, lines 1-14, discloses:

> The central control system may include one or more controllers associated with memory. The central control system may include multiple interfaces with the various areas in the fueling environment. These interfaces include the car wash interface, dispenser interface, QSR interface and the vending interface connected to an automated vending machine. Additionally, the central controller may have a dedicated network or authorization interface connected to a host transaction network for authorizing credit and debit transactions and the like. An Internet interface may also be provided for transaction and other information relating to operation, advertising, merchandising and general inventory and management functions.

Again, this relied-upon portion of Kaehler does not teach, suggest or even mention a merchant identifier. Thus, the citation similarly fails to disclose a transaction processing system to "determine, from said customer/transmitter identifier and a merchant identifier, a payment processor."

Third, Kaehler, at column 8, line 58 to column 9, line 8, discloses:

> In the preferred embodiment, the communications controller specifically provides a spread-spectrum processor associated with an 8-bit microcontroller. The memory includes 256 bytes of RAM. The receiver operates in conjunction with the spread-spectrum processor and is capable of receiving direct sequence, spread-spectrum signals having a center frequency of 2.44175 GHz. The transmitter is preferably a DPSK modulated back-scatter transmitter transmitting differential phase shift key (DPSK) modulated back scatter at 2.44175 GHz with a 596 KHz sub-carrier. The various interrogators in the fueling environment are adapted to receive and transmit the signals to properly communicate with the transponders. For additional information on a transponder/interrogator system providing for highly secure transactions between a transponder and a host authorization system through a dispenser, attention is drawn to application Ser. No.

08/895,417 filed Jul. 16, 1997, entitled CRYPTOGRAPHY SECURITY FOR REMOTE DISPENSER TRANSACTIONS....

Yet again, this relied-upon portion does not mention or suggest a merchant identifier. Thus, the citation similarly fails to disclose a transaction processing system to "determine, from said customer/transmitter identifier and a merchant identifier, a payment processor."

Because Kaehler generally, and the relied-upon portions of Kaehler specifically, do not disclose, teach or suggest the existence of a merchant identifier, it follows that the reference similarly does not teach or suggest a transaction processing system that determines a payment processor from a merchant identifier. Therefore, the reference does not teach a transaction processing system comprising a processor configured to use program instructions to "determine, from said customer/transmitter identifier and a merchant identifier, a payment processor."

**2. Christman does not cure the deficiencies of Kaehler**

a. *Christman does not teach or suggest "determine, from said customer/transmitter identifier and a merchant identifier, a payment processor"*

Christman does not cure the above-noted deficiency of Kaehler. Specifically, the Office Action does not allege that Christman teaches or suggests and, in fact, Christman fails to teach or suggest a transaction processing system to "determine, from said customer/transmitter identifier and a merchant identifier, a payment processor."

Therefore, Kaehler and Christman, alone or in combination, do not disclose, teach, or suggest the recited transaction processor system configured to "determine, from said customer/transmitter identifier and merchant identifier, a payment processor." Accordingly, Appellants respectfully request that the Board reverse the rejection of claim 28.

b. *Christman does not teach or suggest "wherein a merchant is associated with a given brand, and wherein the merchant*

*identifier is the same for all stores associated with the given brand"*

In addition, the Office Action acknowledges that Kaehler does not teach or suggest "wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand." *See* Office Action, page 3. However, to cure this deficiency, the Office Action asserts that the recited limitation is disclosed by Christman in column 19, lines 21-44 and column 1, lines 39-67. *See* Office Action, page 3. The Office Action is wrong.

First, addressing each citation in turn, Christman, at column 19, lines 21-44, discloses:

> Referring now to FIG. 5, there is shown in block diagram format a preferred networking arrangement for central system controller that illustrates in particular the manner of enabling the operator terminals at the remote service facility to access various commercial retailers and online merchants having electronically-developed sites on a distributed large-scale communications network (e.g., Internet or Worldwide Web). In particular, central system controller is arranged for connection to a plurality of commercial retailers via respective connection paths and further arranged for connection to a plurality of online merchants that are electronically accessible via Internet facility. As shown, the same server can be used to facilitate these additional access connections or another dedicated server may be provided for this purpose. In the manner described previously, the operator terminals are connected as shown to the plurality of fuel dispensing systems for the purpose of receiving, processing and executing the refueling transaction requests made by the customer. The illustrated connectivity between the remote service facility and online merchants is particularly noteworthy because it enables the customer to request additional transactions that can be executed by central system controller pursuant to the proper electronic commerce activity.

Clearly, this relied upon-portion of Christman does not teach "wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand." The disclosure of "various commercial retailers and online merchants" in no way teaches or suggests a merchant identifier that is the same for all stores associated with a

given brand. In fact, Christman does not even disclose associating merchants with a particular brand at all.

Second, Christman, at column 1, lines 39-67 discloses:

> The customer returns the nozzle assembly to its holding receptacle after completing the refueling activity and then retrieves the billing receipt being printed at the fuel dispenser housing. Authorization of the refueling request typically involves transmission of the credit card information to the card issuer to verify that sufficient funds are available for the transaction. The refueling request is either approved or denied based upon the response received in connection with the verification inquiry. The fuel dispensing apparatus is appropriately operated pursuant to the decision made regarding the refueling request. For purposes of implementing these transaction processing functions, service station sites are conventionally provided with on-site processing facilities to request verification of the credit card account (i.e., by communicating with the card issuing institution) and then executing the proper course of control action relative to the fuel dispensing equipment based on the verification response. The control facility for processing the transaction request is typically implemented by processor devices and other such equipment located at the service station site. What is apparent from this arrangement is that the processing functions associated with making a decision regarding the transaction request and then formulating the proper control action to implement the decision are localized to the particular service station site where the refueling operation takes place. This form of dedicated on-site processing may be appropriate for franchises having only a few local service station outlets....

Again, this relied-upon portion of Christman does not teach or suggest a merchant identifier that is the same for all stores associated with a given brand. Nothing about "on-site processing" teaches or suggests "wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand." Thus, this citation similarly fails to disclose "wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand."

Therefore, neither Kaehler nor Christman, alone or in combination, teach "wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand." Accordingly, for this reason as well, Appellants respectfully request that the Board reverse the rejection of claim 28.

**B. Dependent Claims 31-47 and 83 Are Patentable Over Kaehler and Christman Under 35 U.S.C. § 103(a)**

On pages 4-6 and 9, the Office Action rejects claims 31-47 and 83, all of which are dependent or ultimately dependent upon independent claim 28, under 35 U.S.C. § 103(a) as allegedly being obvious over the combination of Kaehler and Christman. Appellants respectfully traverse. Each of these claims is patentable for the same reasons previously detailed with respect to claim 28. Further, as set forth below, most of these claims are separately patentable from claim 28 for one or more reasons.

1. Claims 32 and, therefore, claims 33-35 dependent thereon, are separately patentable from claim 28. Claim 32 recites:

> The system of claim 31, wherein said customer transceiver is further comprised of a security device operable to capture biometric data and to convert said data into an electronic representation of said data.

(Underline emphasis added.)

The Office Action asserts that claim 32 is disclosed by Kaehler in column 2, lines 49-65 and column 29, lines 26-32. *See* Office Action, page 4.

Kaehler, at column 2, lines 49-65, discloses:

> Another aspect of the invention is to provide a method for enhancing a fueling transaction, including the steps of receiving signals including identification indicia from a remote communications unit associated with a customer, preconditioning a dispenser for fueling based on the first identification indicia, and authenticating a transaction involving the remote communications unit. The authentication step includes determining requisite

> authentication data based on the first identification indicia and correlating the authentication data with the second indicia. Authentication occurs when the second indicia and the requisite transaction indicia properly correlate. The second indicia may be received from a second remote communications unit, a keypad, the same remote communications unit that sent the first indicia, or any other type of customer identification means, including biometric information.

Kaehler, at column 29, lines 29-32, discloses:

> In this application, the microphone, in conjunction with the audio processing circuitry or the camera, may function to provide a voice print of the customer or an image of the customer to authenticate a transponder. Likewise, a fingerprint imager may use a customer's fingerprint to authenticate the transponder.

As evident above, and contrary to the Office Action, Kaehler does not teach or suggest the recited customer transceiver. At best, Kaehler teaches a fuel dispenser associated with a fingerprint imager. *See* Kaehler, column 29, lines 21-32. A fuel dispenser associated with a fingerprint imager is not a customer transceiver comprised of "a security device operable to capture biometric data and to convert said data into an electronic representation of data." For this additional reason, claims 32-35 are not disclosed, taught or suggested by Kaehler.

2. Claim 36 is separately patentable from claim 28. Claim 36 recites:

> The system of claim 31, wherein said customer transceiver is adapted to: compare a transaction amount with a dollar amount stored in said customer transceiver memory; and inhibit transmission of said customer/transmitter identifier when said transaction amount is greater than said dollar amount.

The Office Action asserts that claim 36 is disclosed by Kaehler in FIG. 4a and in column 19, lines 3-29. *See* Office Action, page 4.

Kaehler, at column 19, lines 3-29, discloses:

> At this point, the transponder has value (or is associated with value) and is capable of being interrogated at various POS terminals. In this example, the POS is an interface at a fuel

> dispenser. During the transaction, the dispenser will interrogate the transponder and authorize a transaction within the stored credit or value of the transponder. The transaction will proceed and the appropriate control system will determine that the values incurred during a transaction remain less than the value of the transponder. As the transaction is monitored, the control system will stop or limit the transaction before the value of the transponder is exceeded. As long as the transaction remains less than the value of the transponder, the transaction will proceed until completed. Once the transaction is complete, the control system will determine transaction totals and transmit such totals to the transponder for accounting. Alternatively, these totals may be send to a database corresponding to the respective transponder in order to keep track of prepayment and associated totals. The accounting may be done at the transponder, wherein the value of the transaction is received y the transponder and the appropriate calculations are completed. Alternatively, the control system may simply update the value associated with the transponder by either transmitting this value directly to the transponder or storing it in the databases associated with the transponder.

A fuel dispenser that will stop a transaction based on a stored value is not a customer transceiver that inhibits transmission of a customer/transmitter identifier. Moreover, there is no teaching or suggestion in Kaehler to inhibit transmission of a customer/transmitter identifier from a transponder in any manner. Kaehler therefore does not teach or suggest a customer transceiver that compares and "inhibit[s] transmission of said customer/transmitter identifier when said transaction amount is greater than said dollar amount." For this additional reason, claim 36 is not disclosed, taught or suggested by Kaehler.

3. Claim 38 is separately patentable from claim 28. Claim 38 recites:

> The system of claim 28, further comprising: a customer transceiver comprising memory, a processor coupled to the memory, and a keyboard coupled to the processor, wherein said customer transceiver receives the first radio frequency signal and subsequently transmits the second radio frequency signal that conveys the customer/transmitter identifier, and wherein said processor is operable to transmit information stored in said memory, or manually entered via said keyboard.

The Office Action asserts that claim 38 is disclosed by Kaehler in column 6, lines 55-67 to column 7, lines 1-10. *See* Office Action, page 5.

Kaehler, at column 6, line 55 to column 7, line 10, discloses:

> With the above in mind, the refueling environment may include many interrogators of varying capability. These interrogators may include: dispenser interrogators, a store transaction interrogator, a QSR transaction interrogator, a drive-thru pick-up interrogator, a drive-thru order interrogator, and a drive-thru position interrogator. As shown in FIGS. 2A, 2B and 2C, the dispenser interrogator is generally adapted to communicate with vehicle-mounted transponders and personal transponder. The personal transponder may be mounted on a key fob, a wallet card, or any other device typically carried by the customer, as shown in FIGS. 2B and 2C. FIG. 2A depicts a vehicle having a vehicle-mounted transponder. The levels of sophistication of the vehicle-mounted transponder may vary drastically. The transponder may be integrated with the vehicle's main computer and control system, or may simply be a sticker placed on a window or another part of the vehicle. The transponder may be active or passive, and may be adapted to either simply send out an identification number or carry out high-level communications and have the ability to process, store and retrieve information. Various features of the invention will be disclosed in greater detail.

The Office Action mistakenly aligns the recited customer transceiver with the general transponder. *See* Office Action, page 5. Kaehler does not teach a personal transponder having a keyboard, and Appellants respectfully assert that it would not be inherent to associate a keyboard with such a device. For this additional reason, claim 38 is not disclosed, taught or suggested by Kaehler.

4. Claim 39 is separately patentable from claim 28. Claim 39 recites:

> The system of claim 28, further comprising: a customer transceiver embedded inside an article of clothing, wherein the customer transceiver receives the first radio frequency signal and subsequently transmits the second radio frequency signal that conveys the customer/transmitter identifier.

The Office Action asserts that claim 39 is disclosed by Kaehler in column 6, lines 55-67

to column 7, lines 1-10. *See* Office Action, page 5. Claim 39 is separately allowable because Kaehler does not teach or suggest the recited customer transceiver. Claim 39 recites that the customer transceiver is "embedded inside an article of clothing." Kaehler does not teach or suggest any device that is embedded in clothes. In fact, Kaehler does not even mention the words "clothes" or "clothing" whatsoever. Appellants therefore respectfully submit that claim 39 is allowable over Kaehler for at least this additional reason.

5. Claim 40 is separately patentable from claim 28. Claim 40 recites:

> The system of claim 28, further comprising: a customer transceiver embedded inside an item of jewelry, wherein the customer transceiver receives the first radio frequency signal and subsequently transmits the second radio frequency signal that conveys the customer/transmitter identifier.

The Office Action asserts that claim 40 is disclosed by Kaehler in column 6, line 55 to column 7, line 10. *See* Office Action, page 5. Claim 40 is separately allowable because Kaehler does not teach or suggest the recited customer transceiver. Claim 40 recites that the customer transceiver is "embedded inside an item of jewelry." Kaehler does not teach or suggest any device that is embedded inside an item of jewelry. In fact, Kaehler does not mention the word "jewelry" whatsoever. Appellants therefore respectfully submit that claim 40 is allowable over Kaehler for at least this additional reason.

In view of the above, Appellants respectfully request that the Board reverse the rejection of claims 31-47 and 83.

### C. Independent Claim 51 is Patentable Over Kaehler and Christman Under 35 U.S.C. § 103(a)

On pages 6-7, the Office Action rejects independent claim 51 under 35 U.S.C. § 103(a) as allegedly being obvious in view of the combination of Kaehler and Christman. Appellants respectfully traverse this rejection.

As stated, claim 51 recites:

> A method comprising:
> transmitting a first radio frequency signal to a customer transceiver;
> receiving a second radio frequency signal including customer identification data at a receiver;
> creating an authorization request based in part upon the receipt of the customer identification data, the authorization request comprising transaction data and the received customer identification data;
> communicating the authorization request to a transaction processor;
> selecting a payment processor at the transaction processor based at least in part upon information associated with the customer identification data and a merchant identifier stored in a database accessible by the transaction processor; and
> communicating with the selected payment processor for approval and payment, wherein a merchant is associated with a given brand, wherein the merchant identifier is the same for all stores associated with the given brand, and wherein each customer account comprises one or more preassigned payment methods, and the one or more preassigned payment methods are associated with a respective one or more merchants, and the one or more preassigned payment methods vary for transactions with different merchants in multiple customer accounts.

(Underline emphasis added.)

The Office Action acknowledges that Kaehler does not teach or suggest "wherein a merchant is associated with a given brand, wherein the merchant identifier is the same for all stores associated with the given brand." *See* Office Action, page 7. The Office Action asserts that it would have been obvious "to modify the teachings of Kaehler to include wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand taught by Christman in order to limit customer transactions." *See* Office Action, page 7. Appellants respectfully disagree. As set forth below, Kaehler and Christman, whether taken alone or in combination, fail to disclose, teach or suggest, a system "wherein each customer account comprises one or more preassigned payment methods,

and the one or more preassigned payment methods are associated with a respective one or more merchants, and the one or more preassigned payment methods vary for transaction with different merchants in multiple customer accounts" and "wherein a merchant is associated with a given brand, wherein the merchant identifier is the same for all stores associated with the given brand," as presently claimed.

**1. Kaehler does not teach or suggest "wherein each customer account comprises one or more preassigned payment methods, and the one or more preassigned payment methods are associated with a respective one or more merchants, and the one or more preassigned payment methods vary for transactions with different merchants in multiple customer accounts"**

The Office Action asserts that the recited "wherein each customer account comprises one or more preassigned payment methods, and the one or more preassigned payment methods are associated with a respective one or more merchants, and the one or more preassigned payment methods vary for transactions with different merchants in multiple customer accounts" is disclosed by Kaehler, at column 13, lines 36-49 and column 11, lines 1-14 and column 8, lines 58-67 and column 9, lines 1-18. However, neither Kaehler generally, or the cited passages specifically, teach, suggest or even mention that "one or more preassigned payment methods are associated with a respective one or more merchants." Additionally, Kaehler does not teach or suggest "one or more preassigned payment methods vary for transactions with different merchants in multiple customer accounts." In fact, Kaehler does not mention multiple customer accounts at all.

Because the relied-upon portions of Kaehler do not disclose, teach or suggest either multiple customer accounts or payment methods that are associated with respective merchants, Kaehler cannot teach or suggest "wherein each customer account comprises one or more payment methods, and the one or more preassigned payment methods are associated with a

respective one or more merchants, and the one or more preassigned payment methods vary for transactions with different merchants in multiple customer accounts."

**2. Christman does not cure the deficiencies of Kaehler**

a. **Christman does not teach or suggest "wherein each customer account comprises one or more preassigned payment methods, and the one or more preassigned payment methods are associated with a respective one or more merchants, and the one or more preassigned payment methods vary for transactions with different merchants in multiple customer accounts.**

Christman does not cure the above-noted deficiency of Kaehler. Specifically, Christman fails to teach or suggest a transaction processing system "wherein each customer account comprises one or more preassigned payment methods, and the one or more preassigned payment methods are associated with a respective one or more merchants, and the one or more preassigned payment methods vary for transactions with different merchants in multiple customer accounts." Christman does not cure the deficiency of Kaehler because Christman does not teach or suggest either the recited multiple customer accounts or associating preassigned payment methods with respective merchants. Instead, Christman, at best, only teaches using the same payment method for all online merchants. When using only one payment method for all merchants, the "preassigned payment methods" cannot "vary for transactions with different merchants." Therefore, Christman cannot teach or suggest "wherein each customer account comprises one or more payment methods, and the one or more preassigned payment methods are associated with a respective one or more merchants, and the one or more preassigned payment methods vary for transactions with different merchants in multiple customer accounts."

b. **Christman does not teach or suggest "wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand"**

In addition to the above noted deficiencies, the Office Action acknowledges that Kaehler does not teach or suggest "wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand." *See* Office Action, page 7. To cure this deficiency, the Office Action asserts that the recited "wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with a given brand" is disclosed by Christman, in column 19, lines 21-44 and column 1, lines 39-67. *See* Office Action, page 7. For at least the reasons discussed above with regard to claim 28, Appellants respectfully assert that Christman does not disclose, teach or suggest "wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores with the given brand." In view of the above, Appellants respectfully request that the Board reverse the rejection of claim 51.

**D. Dependent Claims 52-58, 63-65, 84, 91-98 and 106 Are Patentable Over Kaehler and Christman Under 35 U.S.C. § 103(a)**

The Office Action rejects claims 52-58, 63-65, 84, 91-98 and 106, all of which are dependent or ultimately dependent upon independent claim 51, under 35 U.S.C. § 103(a) as allegedly being unpatentable over the combination of Kaehler and Christman. *See* Office Action, pages 8-10. Appellants respectfully traverse. Each of the claims is patentable for the same reasons previously detailed with respect to claim 51. In addition, as set forth below, claim 57 is separately patentable.

As stated, claim 57 recites:

> The method of claim 51, further comprising: processing the authorization request at the transaction processor according to one of the one or more preassigned payment methods.

The Office Action asserts that claim 57 is disclosed by Kaehler in column 11, lines 1-14 and column 7, lines 29-43. *See* Office Action, page 8. Claim 57 is separately allowable because Kaehler does not teach or suggest the recited database information. Specifically, Kaehler does not teach or suggest "processing the authorization request at the transaction processor according to one of the one or more preassigned payment methods." The act of authorizing a credit card transaction based on information received from a dispenser's card reader in no way teaches or suggests database information comprising "processing the authorization request at the transaction processor according to one of the one or more preassigned payment methods." Appellants therefore respectfully submit that claim 57 is allowable over Kaehler for at least this additional reason.

In view of the above, Appellants respectfully request that the Board reverse the rejection of claims 52-58, 63-65, 84, 91-98 and 106.

**E. Independent Claim 99 is Patentable Over Kaehler**

The Office Action rejects independent claim 99 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kaehler. *See* Office Action, page 10. Appellants respectfully traverse this rejection.

As stated, claim 99 recites:

> A method for processing transactions comprising the steps of:
> receiving a signal at a point-of-sale device, said signal comprising customer identification data;
> transmitting an authorization request from said point-of-sale device to a transaction processing system, said authorization request comprising a merchant identifier, transaction data, and said customer identification data; and
> receiving a response to said authorization request from said transaction processing system.

(Underline emphasis added.)

The Office Action asserts that "transmitting an authorization request from said point-of-sale device to a transaction processing system, said authorization request comprising a merchant identifier, transaction data, and said customer identification data" is disclosed by Kaehler, at column 13, lines 36-49 and column 11, lines 1-14 and column 8, line 58 to column 9, line 19. *See* Office Action, page 10. However, as discussed above, the relied upon portions of Kaehler do not teach or suggest the existence of a merchant identifier in any way. For example, in column 13, lines 26-49, there is no mention of a merchant identifier. Column 11, lines 1-14 also fails to mention a merchant identifier. Finally, column 8, line 58 to column 9, line 18 does not mention a merchant identifier.

Because the relied upon portions do not teach or suggest the existence of a merchant identifier, it follows that the relied-upon portions do not teach or suggest a method for processing transactions that transmit a merchant identifier, much less "transmitting an authorization request from said point-of-sale device to a transaction processing system, said authorization request comprising a merchant identifier, transaction data, and said customer identification data." In view of the above, Appellants respectfully request that the Board reverse the rejection of claim 99.

**F. Dependent Claim 100 is Separately Patentable Over Kaehler**

The Office Action rejects claim 100, which is dependent upon independent claim 99, under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kaehler. *See* Office Action, page 10. Appellants respectfully traverse this rejection. Claim 100 is patentable for the same reasons set forth above with respect to claim 99. In addition, as set forth below, claim 100 is separately patentable.

As stated, claim 100 recites:

> The method of claim 99, wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand.

(Underline emphasis added.)

The Office Action asserts that claim 100 is disclosed by Kaehler in column 13, lines 36-49 and column 11, lines 1-14 and column 8, lines 58-67 and column, lines 1-18. *See* Office Action, page 10. This assertion is wholly inconsistent with the Office Action's previous position acknowledging that Kaehler does not teach or suggest "wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand." *See* Office Action, pages 3 and 7. Appellants cannot reconcile the inconsistent positions taken by the Office Action and therefore respectfully submit that this rejection is improper in view of at least the Office Action's inconsistent positions.

**G. Independent Claim 101 is Patentable Over Kaehler**

The Office Action rejects claim 101 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kaehler. *See* Office Action, page 10. Appellants respectfully traverse this rejection.

Independent claim 101 contains similar recitations as independent claim 99. Specifically, claim 101 recites "transmitting an authorization request from one of said plurality of point-of-sale devices to said transaction processing system, said authorization request comprising a merchant identifier, transaction data, and said customer identification data."

The Office Action asserts that this recitation is disclosed by Kaehler in column 13, lines 36-49 and column 11, lines 1-14 and column 8, lines 58-67 and column 9, lines 1-18. *See* Office Action, pages 11 and 12. Appellants respectfully disagree.

As discussed above with respect to claim 99, the relied upon portions of Kaehler do not teach or suggest the existence of a merchant identifier in any way. Claim 101 is therefore

allowable for at least similar reasons as discussed above with regard to claim 99. In view of the above, Appellants respectfully request that the Board reverse the rejection of claim 101.

**H. Dependent Claim 102 is Separately Patentable Over Kaehler**

The Office Action rejects claim 102, which is dependent upon claim 101, under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kaehler. *See* Office Action, page 11. Appellants respectfully traverse this rejection. Claim 102 is patentable for the same reasons detailed with respect to claim 101. Further, for the reason set forth below, claim 102 is separately patentable.

Claim 102 recites:

> The method of claim 101, wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand.

(Underline emphasis added.)

The Office Action asserts that Kaehler discloses "wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand." *See* Office Action, page 11. Again, this assertion is wholly inconsistent with the Office Action's previous position acknowledging that Kaehler does not teach or suggest the recitation "wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand." *See* Office Action, pages 3 and 7. Appellants cannot reconcile the inconsistent positions taken by the Office Action and respectfully submit that the rejection of claim 102 is also improper.

**I. Independent Claim 103 is Patentable Over Kaehler**

The Office Action rejects independent claim 103 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kaehler. *See* Office Action page 11. Appellants respectfully traverse this rejection.

Independent claim 103 contains similar recitations as independent claim 99. Specifically, claim 103 recites "transmitting an authorization request from one of said plurality of point-of-sale devices to a transaction processing system, said authorization request comprising a merchant identifier, said transaction data, and said customer identification data."

The Office Action asserts that "transmitting an authorization request from one of said plurality of point-of-sale devices to a transaction processing system, said authorization request comprising a merchant identifier, said transaction data, and said customer identification data" is disclosed by Kaehler, column 13, lines 36-49 and column 11, lines 1-14 and column 8, line 58 to column 9, line 19. *See* Office Action, page 11.

As previously discussed with respect to claim 99, the portions of Kaehler that the Office Action relies upon as disclosing the method for processing transactions do not teach or suggest the existence of a merchant identifier in any way. Therefore, claim 103 is allowable for at least the same reasons as discussed above with regard to claims 99. Appellants therefore respectfully request the Board reverse the rejection of claim 103.

**J. Dependent Claims 104 and 105 are Patentable Over Kaehler**

The Office Action rejects claims 104 and 105, which are dependent upon claim 103, as allegedly being unpatentable over Kaehler. *See* Office Action, page 11. Appellants respectfully traverse this rejection. Each of these claims is patentable for the same reasons previously detailed with respect to claim 103. In view of the above, Appellants respectfully request that the Board reverse the rejection of claims 104 and 105.

**VIII. Conclusion**

Because the cited references fail to disclose or render obvious all features set forth in the pending claims, Appellants submit that the pending claims are allowable over the cited references. Accordingly, Appellants respectfully request that the Board reverse the prior art rejections set forth in the Action, and allow all of the pending claims. Authorization is hereby granted to charge or credit the undersigned's Deposit Account No. 50-0206 for any fees or overpayments related to the entry of this Appeal.

Respectfully submitted,

Date: July 16, 2008

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## IX. Claims Appendix

1-27. (Canceled)

28. (Previously Presented) A system comprising:

a merchant transceiver, comprised of a transceiver antenna, that (a) sends a first radio frequency signal to a customer transceiver and (b) receives a second radio frequency signal conveying a customer/transmitter identifier from said customer transceiver;

a point-of-sale device processor, in communication with said merchant transceiver, that (a) captures transaction data and (b) transmits an authorization request to a transaction processing system; and

a transaction processing system comprising a memory having program instructions, and a processor configured to use said program instructions to (a) receive said authorization request, (b) determine, from said customer/transmitter identifier and a merchant identifier, a payment processor, (c) transmit an authorization request to said payment processor for authorization and (d) transmit to said point-of-sale device said payment processor's response to said authorization request,

wherein a merchant is associated with a given brand, and

wherein the merchant identifier is the same for all stores associated with the given brand.

29-30. (Canceled)

31. (Previously Presented) The system of claim 28, further comprising:

a customer transceiver comprising memory and a processor coupled to said memory,

wherein said customer transceiver receives the first radio frequency signal and subsequently transmits the second radio frequency signal that conveys the customer/transmitter identifier, and

wherein said processor is adapted to read data from, and write data to, said memory.

32. (Previously Presented) The system of claim 31, wherein said customer transceiver is further comprised of a security device operable to capture biometric data and to convert said data into an electronic representation of said data.

33. (Original) The system of claim 32, wherein said biometric data is a fingerprint.

34. (Original) The system of claim 32, wherein said biometric data is a palm print.

35. (Previously Presented) The system of claim 32, wherein said customer transceiver processor is adapted to: compare an electronic representation of said captured biometric data with a digital image stored in said customer transceiver memory; and transmit said customer/transmitter identifier when said captured biometric data is identical to said digital image stored in said customer transceiver memory.

36. (Previously Presented) The system of claim 31, wherein said customer transceiver processor is adapted to: compare a transaction amount with a dollar amount stored in said customer transceiver memory; and inhibit transmission of said customer/transmitter identifier when said transaction amount is greater than said dollar amount.

37. (Previously Presented) The system of claim 31, wherein said customer transceiver processor is adapted to subtract a transaction amount from a dollar amount stored in said customer transceiver memory when said transaction is authorized.

38. (Previously Presented) The system of claim 28, further comprising:

a customer transceiver comprising memory, a processor coupled to the memory, and a keyboard coupled to the processor,

wherein said customer transceiver receives the first radio frequency signal and subsequently transmits the second radio frequency signal that conveys the customer/transmitter identifier, and

wherein said processor is operable to transmit information stored in said memory, or manually entered via said keyboard.

39. (Previously Presented) The system of claim 28, further comprising:

a customer transceiver embedded inside an article of clothing, wherein the customer transceiver receives the first radio frequency signal and subsequently transmits the second radio frequency signal that conveys the customer/transmitter identifier.

40. (Previously Presented) The system of claim 28, further comprising:

a customer transceiver embedded inside an item of jewelry, wherein the customer transceiver receives the first radio frequency signal and subsequently transmits the second radio frequency signal that conveys the customer/transmitter identifier.

41. (Previously Presented) The system of claim 28, further comprising:

a customer transceiver embedded inside an electronic device, wherein the customer transceiver receives the first radio frequency signal and subsequently transmits the second radio frequency signal that conveys the customer/transmitter identifier.

42. (Original) The system of claim 28 wherein said merchant transceiver is further comprised of: a processor coupled to the transceiver; and a keyboard coupled to the processor; wherein said processor is operable to receive information manually entered into said keyboard or received via said transceiver.

43. (Original) The system of claim 42, wherein said merchant transceiver is further comprised of a display device for displaying information to a user.

44. (Original) The system of claim 42, wherein said merchant transceiver is further comprised of a printer for printing a receipt.

45. (Original) The system of claim 42, wherein said merchant transceiver is further comprised of a memory operable to store information relating to a transaction.

46. (Previously Presented) The system of claim 42, wherein said merchant transceiver is further comprised of a communication interface for communicating with at least the point-of-sale device.

47. (Previously Presented) The system of claim 46, wherein said communication interface provides wireless connectivity to the point-of-sale device.

48-50. (Canceled)

51. (Previously Presented) A method comprising:

transmitting a first radio frequency signal to a customer transceiver;

receiving a second radio frequency signal including customer identification data at a receiver;

creating an authorization request based in part upon the receipt of the customer identification data, the authorization request comprising transaction data and the received customer identification data;

communicating the authorization request to a transaction processor;

selecting a payment processor at the transaction processor based at least in part upon information associated with the customer identification data and a merchant identifier stored in a database accessible by the transaction processor; and

communicating with the selected payment processor for approval and payment,

wherein a merchant is associated with a given brand,

wherein the merchant identifier is the same for all stores associated with the given brand, and

wherein each customer account comprises one or more preassigned payment methods, and the one or more preassigned payment methods are associated with a respective one or more merchants, and the one or more preassigned payment methods vary for transactions with different merchants in multiple customer accounts.

52. (Previously Presented) The method of claim 51, the creating an authorization request further comprising:

communicating said customer identification data to a point-of-sale device and having the point-of-sale device create the authorization request.

53. (Previously Presented) The method of claim 52, said receiver is coupled to said point-of-sale .

54. (Previously Presented) The method of claim 52, said point-of-sale device is integral with said receiver.

55. (Previously Presented) The method of claim 51, further comprising: processing the purchase transaction for approval and payment.

56. (Previously Presented) The method of claim 51, wherein the communicating the authorization request to a transaction processor further comprises encrypting the authorization request.

57. (Previously Presented) The method of claim 51, further comprising:

processing the authorization request at the transaction processor according to one of the one or more preassigned payment methods.

58. (Previously Presented) The payment method of claim 51, wherein the preassigned payment method(s) are preselected by a customer.

59-62. (Canceled)

63. (Previously Presented) The method of claim 52 wherein the point of sale device is coupled to a security device that prevents unauthorized use of the transceiver.

64. (Previously Presented) The method of claim 63 wherein the security device further comprises a biometric recording device.

65. (Previously Presented) The method of claim 52 further comprising:

inputting a password or Personal Identification Number (PIN) into a security device in communication with said point of sale device.

66 - 82. (Canceled)

83. (Previously Presented) The system of claim 28 wherein said customer/transmitter identifier does not contain a customer's credit card or debit card number.

84. (Previously Presented) The system of claim 51 wherein said customer identification data does not contain a customer's credit card or debit card number.

85-90. (Canceled)

91. (Previously Presented) The system of claim 28, further comprising:

a customer transceiver comprising memory, wherein said customer transceiver generates operating power after receiving the first radio frequency signal and subsequently transmits the second radio frequency signal that conveys the customer/transmitter identifier.

92. (Previously Presented) The system of claim 28, wherein the point-of-sale device combines the transaction data with the customer/transmitter identifier and the merchant identifier to form the authorization request.

93. (Previously Presented) The method of claim 51, further comprising:

upon receiving the first radio frequency signal, subsequently transmitting, from the customer transceiver, the second radio frequency signal that conveys the customer identification data.

94. (Previously Presented) The method of claim 93, wherein the customer transceiver generates operating power after receiving the first radio signal

95. (Previously Presented) The method of claim 51, wherein the authorization request further comprises the merchant identifier.

96. (Previously Presented) The method of claim 51, further comprising the step of determining, from said transaction data, a loyalty award and storing information pertaining to said loyalty award with the customer account information.

97. (Previously Presented) The method of claim 96 where the loyalty award is redeemable with a merchant other than the merchant associated with the merchant identifier.

98. (Previously Presented) The method of claim 97 where the loyalty award is credited in the customer account using a another merchant identifier.

99. (Previously Presented) A method for processing transactions comprising the steps of:

receiving a signal at a point-of-sale device, said signal comprising customer identification data;

transmitting an authorization request from said point-of-sale device to a transaction processing system, said authorization request comprising a merchant identifier, transaction data, and said customer identification data; and

receiving a response to said authorization request from said transaction processing system.

100. (Previously Presented) The method of claim 99, wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand.

101. (Previously Presented) A method for collecting consumer purchasing trend information in a transaction system, said method comprising the computer-implemented steps of:

receiving a signal at one of a plurality of point-of-sale devices, said signal comprising customer identification data;

transmitting an authorization request from one of said plurality of point-of-sale devices to said transaction processing system, said authorization request comprising a merchant identifier, transaction data, and said customer identification data; and

updating a database with said transaction data and said customer identification data.

102. (Previously Presented) The method of claim 101, wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand.

103. (Previously Presented) A method of monitoring customer progress in a merchant award program, comprising the steps of:

receiving a signal at one of a plurality of point-of-sale devices, said signal comprising customer identification data;

transmitting an authorization request from one of said plurality of point-of-sale devices to a transaction processing system, said authorization request comprising a merchant identifier, said transaction data, and said customer identification data; and

crediting a customer account in a database with loyalty points indicative of said transaction data.

104. (Previously Presented) The method of claim 103, wherein a merchant is associated with a given brand, and wherein the merchant identifier is the same for all stores associated with the given brand.

105. (Previously Presented) The method according to claim 103, wherein the loyalty points are redeemable with a merchant other than a merchant associated with the merchant identifier.

106. (Previously Presented) The method according to claim 51, further comprising:

determining, from said customer identification data, loyalty award program data that corresponds to said customer identification data, said merchant identifier, or a combination thereof,

wherein the loyalty award program data comprises a loyalty award amount that is redeemable with a merchant other than the merchant associated with the merchant identifier.

## X. Evidence Appendix

None.

## XI. Related Proceedings Appendix

None.